IN THE HIGH COURT OF JUDICATURE FOR RAJASTAN AT JODHPUR

O R D E R

(1) S.B.Criminal Misc. Petition No. 41/99
(M/s Dueful Laboratory & Anr.Vs. State of Rajasthan and Ors.)

(2) S.B.Criminal Misc. Petition No. 42/99
(M/s Dueful Laboratory & Anr.Vs. State of Rajasthan and Ors.)

Date of order : 07.07.2006

P R E S E N T

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. K.L.Jasmatiya for the petitioners.
Mr. Ashok Upadhyay, public prosecutor.
Mr. Jagdish Vyas for non-petitioner No.4 and 5.
None present for the non-petitioners No.1 to 3 though served.

By the instant criminal misc. petitions under Section 482 Cr.P.C., the petitioners have challenged the order dated 26.11.1998 passed by Additional Chief Judicial Magistrate, Nimbahera, district Chittorgarh (for short 'the trial court' hereinafter) in criminal case No.429/92 whereby the trial court dismissed the application filed by the petitioners under Section 91 Cr.P.C. Aggrieved by the order impugned, the petitioners have filed these two separate petitions.

I have heard learned counsel for the parties at length. Perused the order impugned.

From the perusal of the order impugned, it appears that a complaint was filed by Drug Inspector Chandra Bhusan Gupta against the petitioner firm and Dr. Pushap Kumar Mengi, Proprietor of M/s Dueful Laboratory, for the offence punishable under the Drugs and Cosmatics Act, 1940 (for short 'the Act' hereinafter) The matter was at the stage of appearance of accused therein. During the pendency of the criminal case, the petitioners filed an application stating therein that on 9.10.89 and 23.10.89 they sent the letters to the Drug Inspector expressing their desire for getting the drugs in question analyzed by Central Drug Laboratory. The petitioners have also sent telegram on 9.10.89 to this effect and therefore, the petitioners sought a direction to the Drug Inspector to produce those documents which the Drug Inspector did not produce along with the complaint. The trial court observed that the matter is at the stage of appearance of the accused, some of the accused have not been served, and therefore, at that stage, it was not considered appropriate to summon those documents.

Learned counsel for the petitioners submits that under sub-section (4) of Section 25 of the Act, where a person

accused intends to adduce evidence in contravention of a Government Analyst's report, he may express the intention to get the samples analysed from the Central Drug Laboratory and therefore, the petitioners by invoking this provision, requested the Drug Inspector to get the drug analysed from the Central Drug Laboratory. The trial court dismissed the application on the ground that the petitioners failed to disclose the purpose for which the documents sought to be summoned. Learned counsel further submits that the purpose for which the documents were summoned is that the petitioners who are facing accusation have a valid defence, requested the Drug Inspector to deposit the samples in Court so as to send the same to the Central Drug Laboratory for being analysed.

Sub-Section (3) of Section 25 clearly provides that any document purporting to be a report signed by a Government Analyst under this Chapter shall be evidence of the facts stated therein and such evidence shall be conclusive unless the person from whom the sample was taken or the person whose name, address and other particulars have been disclosed under Section 18-A has, within twenty-eight days of the receipt of a copy of the report, notified in writing the Inspector or the Court before which any proceedings in respect of the sample are pending that he intends to adduce evidence in contravention of the report.

By sending letters as also the telegram, the petitioners have expressed their intention to adduce the evidence in contravention of the report of Govt. Analyst requesting the drug inspector to send the sample of the drug to Central Drug Laboratory. Those letters and telegram are material because sub-section (3) of Section 25 of the Act provides that the report shall be conclusive unless the person from whom the sample was taken expressed his intention to get the sample analysed by Central Drug Laboratory. In these circumstances, two letters addressed by the petitioners to drug inspector as also the telegram sent to drug inspector have direct bearing to the case to the extent that the petitioners by those letters and telegram can establish that within 28 days from the date of receipt of copy of report, they expressed their intention to get the sample analysed by Central Drug Laboratory. If those documents are not on record, then the complainant would be in a position to say that the petitioners did not intend to get the sample analysed. A valuable statutory right has been conferred in favour of the petitioners and therefore, the documents sought to be got produced are essential in the facts and circumstances of the case.

In this view of the matter, the petitions are allowed. The order impugned in both the petitions dated 26.11.1998

passed by the trial court are set aside and the trial court is directed to summon the documents sought to be summoned by the petitioners in their application under Section 91 Cr.P.C.

(H.R.PANWAR), J.

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